

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 04-25**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of sales and use tax to school books.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- A. The taxpayer must not have misstated or omitted material facts in the transaction;
- B. Facts that develop later must not be materially different from the facts upon which the ruling was based;
- C. The applicable law must not have been changed or amended;
- D. The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- E. The taxpayer directly involved must have acted in good faith in relying upon the ruling, and a revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER IS] incorporated in the State of [NOT TENNESSEE] and [IS] in the business of publishing and selling textbooks and other educational material directly to public schools, private schools, and home schooled children in the State of Tennessee.

Items sold by the Taxpayer include textbooks, teacher edition books, [AND OTHER TEACHING MATERIAL, INCLUDING VIDEO TAPES].¹ For example, the Taxpayer offers the following materials for 4th grade history:

Student Textbook – [TITLE OF TEXTBOOK]

Teacher Edition Book – copy of the student text plus teaching techniques, answers to questions in the text, enrichment ideas, scope and sequence of the material, and sample plans for the first twelve lessons

Answer Key – answers to questions found in the student textbook

[OTHER TEACHING MATERIALS]

[STUDENT WORKBOOKS]

QUESTIONS

1. Are school books sold to public schools, private schools, and home-schooled children exempt from Tennessee sales and use tax?
2. For Tennessee sales and use tax purposes, does the term “school books” include teachers’ manuals, teachers’ guides, teaching aids, and other related instructional materials sold in conjunction with student textbooks and from which teachers and educators will be instructing the students?

RULINGS

1. Yes. School books sold to public schools, private schools, and home-schooled children are exempt from Tennessee sales and use tax. A school book is a printed textbook for student use that contains systematically organized educational information that covers the primary objectives of a course of study. A school book may contain stories and excerpts of popular fiction and nonfiction writings but does not include a book primarily published and distributed for sale to the general public. Maps, globes, software, tapes, DVD’s and other items that are not in the form of a printed book are not included in the term “school books.” Therefore, in the example above, only the student textbook would be exempt as a school book.
2. No. The term “school books” only includes textbooks for student use.

¹ Information about the Taxpayer’s products was obtained from its website.

ANALYSIS

Generally, the Tennessee Retailers' Sales Tax Act levies a tax on the sale of each item or article of tangible personal property sold at retail in this state. Tenn. Code Ann. § 67-6-202. "Retail sales" or "sales at retail" means "a taxable sale of tangible personal property or specifically taxable services to a consumer or to any person for any purpose other than for resale." Tenn. Code Ann. § 67-6-102(a)(25)(A). However, three separate exemptions are relevant to the questions presented.

First, sales made to schools are exempt from sales and use tax, provided that the institution is not organized or operated for profit and no part of the net earnings of the institution inures to the benefit of any private shareholder or individual. Tenn. Code Ann. § 67-6-322(a)(4) and (c).² Accordingly, when the Taxpayer sells school books to public or private schools that are not organized or operated for profit, those sales are exempt from Tennessee sales and use tax. However, in order for the exemption to apply, the statute requires that the school provide the Taxpayer with a copy of its exemption certificate issued by the Department of Revenue. Tenn. Code Ann. § 67-6-322(e); Tenn. Comp. R. & Regs. 1320-5-1-.51 and 1320-5-1-.78.

In addition, sales to the State of Tennessee or any county or municipality within the state are exempt. Tenn. Code Ann. § 67-6-329(a)(13). Therefore, schools that are part of the State of Tennessee, or part of a county or municipality of this state, may present a governmental exemption certificate (in lieu of a non-profit school exemption certificate) to document that they are entitled to an exemption. Tenn. Comp. R. & Regs. 1320-5-1-.55. The Taxpayer must keep a copy of the appropriate exemption certificate in its records to document that the purchaser was entitled to the exemption.

Finally, the sale of school books is specifically exempt from tax. Tenn. Code Ann. § 67-6-329(a)(12) states:

The sale at retail, the use, the consumption, the distribution and the storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter:

(12) School books[.]

Accordingly, any sale of school books by the Taxpayer is exempt from Tennessee sales and use tax.

Since the term "school books" has not been defined by statute or regulation, the term must be given its ordinary, natural meaning. *Mercy v. Olsen*, 672 S.W.2d 196, 198

² Under Tenn. Code Ann. § 67-6-102(a)(25)(H), sales to a kindergarten through twelfth grade school or to a school support group, where the goods are intended for resale by the school or school support group, are subject to sales and use tax. The subsequent sale by the school or school support group is then exempt from tax. However, school books are specifically excluded from this special provision.

(Tenn. 1984). The Attorney General's Office examined the meaning of "school books" in a previous opinion and concluded that the term "school books" ordinarily is conceived as including only textbooks and similar instructional materials for student use. Op. Tenn. Att'y Gen. 88-109 (1988)(holding that a school yearbook was not a "school book"). Similarly, Webster's II New College Dictionary (2001) defines "school book" as "a textbook for use in school." In turn, Webster's defines "textbook" as "a book used as a standard work for the formal study of a particular subject" and defines "book" as "a set of written or printed pages fastened on one side and enclosed between protective covers."³

Accordingly, the Department of Revenue considers a school book to be a printed textbook for student use that contains systematically organized educational information that covers the primary objectives of a course of study. A school book may contain stories and excerpts of popular fiction and nonfiction writings but does not include a book primarily published and distributed for sale to the general public.

Maps, globes, software, tapes, DVD's and other items that are not in the form of a printed book are clearly not included in the term "school books." Also, teachers' manuals, teachers' guides, and other instructional materials are not school books. Returning to the example set out in the "Facts" section above, only the student textbook would qualify as a school book.

It should also be noted that the Taxpayer offers to sell various items together as a "kit" for one lump sum price. If a kit contains both taxable and nontaxable items, the Taxpayer must collect tax on the full amount charged unless the invoice makes a separately stated charge for the nontaxable items.

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Approved: Loren L. Chumley
Commissioner of Revenue

Date: 8/16/04

³ Dictionary definitions are not definitive sources for resolving legal questions. *Eastman Chemical Company v. Chumley*, No. M2002-02114-COA-R3-CV (Tenn. Ct. App. January 12, 2004) *perm. app. granted*. However, they are useful in helping to identify the linguistically permissible meanings of a word or phrase. *Id.* (citations omitted).